

# Charlie Dean



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## ADA complaint

Dear Sirs:

Please accept this, my ADA complaint against Texas Department of Licensing and Regulation (“TDLR”) and Psychological Service Inc. (“PSI”). This concerns **my request for accommodation in taking the TDLR’s Auctioneer exam** that is administered by PSI. In outsourcing the testing to ISP, TDLR has outsourced compliance matters of the Americans with Disabilities Act (“ADA”) to PSI. PSI’s failure to allow me to take the test on paper instead of using the computer prevents me, due to my visual disability, from effectively performing on the test, or effectively gaining equal access to a benefit associated with taking the test.

Thus far I have expended the equivalent of a half a day making phone calls and leaving messages at the Michael DeBakey Veteran Hospital in Houston in an attempt to procure medical material to appease PSI. On 3/13/2013 I expended a half a day going to the VA hospital to retrieve medical material. The material was inadequate, due to PSI’s policy, so I will have to repeat at least another trip and perhaps more phone calls and messages and expend more time.

### My visual problem

I have been using computers since the early 1980s. Over time I have experienced diminished visual acuity and I wear bifocals. I am 61 years of age. My present MacBook Pro laptop computer screen is about 15 to 16 inches from my eyes. I look at it through the bottom of my bifocals. The screen is level with the keyboard. The visual part of the screen is less than nine (9) inches tall, and extends upward slightly more than nine (9) inches above the keyboard.

It is very awkward for me to use a desktop computer, especially for an extended period of time. It is not possible to have a desktop computer screen 15 inches from the user’s eyes, unless the user leans forward in a very awkward position. It is not possible to have the bottom of a desktop screen at the same height of the keyboard; but even if this were possible, the top of the screen (due to the fact that desktop screen is larger) would be higher than nine (9) inches tall.

It is not reasonable to expect folks to endure **ergonomic gymnastics** to take a **75-question exam**. I described the problems posed by the testing site barrier (the screen being too high and too far away) to PSI and TDLR. The problem should be so apparent that medical documentation would not be required. In any event, PSI has failed to comply with ADA guidelines.

## PSI's main office

My first encounter with PSI was with its main office at 800-733-9267 on 3/12/2013. I spoke to the special accommodation representative, Misty. I explained to PSI what my functional limitations were in order to help PSI identify an effective accommodation and I pointed out that a laptop computer would solve the problem. The agent said there was no laptop computer available, but that I could take the exam on paper. I told the agent that the paper test was "great" and even better than a computer. The agent then told me that I would first need a letter from a doctor explaining why the accommodation was needed. I told the agent that the problem was so apparent that no such letter should be needed. However, without even meeting me, or attempting any interactive process, the agent said I would need a letter from a doctor before PSI would grant any accommodation. The agent told me that the letter was mandatory.

## PSI's written policy

Inter alia, in its form, PSI states:

Candidates who wish to request special arrangements because of a disability should fax this form and supporting documentation to PSI at (702) 932-2666.

### Requirements for special arrangement requests

You are required to submit documentation from the medical authority or learning institution that rendered a diagnosis. Verification must be submitted to PSI on the letterhead stationery of the authority or specialist and include the following:

- Description of the disability and limitations related to testing
  - Recommended accommodation/modification
  - Name, title and telephone number of the medical authority or specialist
  - Original signature of the medical authority or specialist
- (Texas Department of Licensing and Regulation)

The above-mentioned policy effectively prevents PSI from complying with the ADA, as it forces PSI to completely ignore the prerequisite of attempting to engage in a **reasonable interactive process prior to requiring medical documentation**.

## PSI's testing site in Houston

Later on 3/12/2013 I drove to the testing site, Psychological Service Inc., 9800 Northwest Freeway Suite 200, Houston, TX 77092. As I stood in the testing office, I could see the computers and some people taking tests. I spoke to an agent and explained my predicament. The agent told me that I would need to get a waiver of some sort from TDLR and then TDLR would notify PSI that I had the waiver and then PSI could let me take a paper test. Clearly, this conflicted with what the main PSI office had told me earlier.

This visit would have been an ideal time for PSI to initiate or participate in an **informal dialogue** with me after receiving a request for reasonable accommodation. An agent could have seen me, my glasses, how I use a computer, etc. This should have been a simple matter, and the PSI's negligence here amounts to a failure to provide a reasonable accommodation.

## **TDLR**

Later on 3/12/2013 I called TDLR and spoke to Latasha who told me that I would need to go through PSI to receive an accommodation. I am concerned that TDLR may be outsourcing ADA requirements to PSI, essentially passing the buck from a state government venue to a private venue with lower standards. Eventually I spoke to Trey Seals, Communication Strategic Initiative Evaluation Group. Mr. Seals told me that Don Dudley, Director of PSI, was the person we needed to talk to.

## **My medical condition**

My medical condition (visual impairment) meets the ADA definition of "disability" with respect to taking the auctioneer exam and this meets the prerequisite for me to be entitled to a reasonable accommodation. (Enforcement Guidance)

The test for disability is whether the impairment substantially limits one or more major life activities and should be determined by examining the extent, duration and impact of the impairment. PSI has made no effort to discern the extent, duration, or impact of my vision problem. "Seeing," "thinking," and "concentrating" are considered major life activities, and surely these would be impacted by not being able to read an auctioneer test adequately. (Ada disability definition )

## **Linking my condition to the requested accommodation**

There is a relation between my limited visual acuity and the need for an accommodation; I am only asking for the accommodation because of the visual limitation.

## **PSI failed to meet prerequisites prior to requiring documentation**

If the need for accommodation is not obvious, an employer may request reasonable documentation that the individual has an ADA disability and needs a reasonable accommodation, however there is a prerequisite that must be fulfilled. PSI must first take the initiative to investigate some; it cannot simply presume that a need for accommodation is not obvious if it has expended no effort in the matter. **PSI has failed to attempt to engage in a reasonable interactive process.**

As an alternative to requesting medical documentation, an agent may simply discuss with the person the nature of his/her disability and functional limitations and consider a resolution. This has not been attempted; PSI's written policy prohibits this.

PSI does not dispute that I wear bifocal glasses, nor does it dispute that I wear them to improve my vision, nor does it dispute that I have a need for reasonable accommodation. PSI has not asserted that my disability and the need for reasonable accommodation are not obvious. Nor has PSI alleged that I have not provided the PSI with sufficient information to substantiate that I have an ADA disability and that I need the reasonable accommodation requested. Perhaps if there were a reasonable challenge here, there might be an argument that medical documentation is needed to tip the scales in my favor. In fact, there is no (reasonable or unreasonable) challenge at all.

Any adult of mediocre intelligence can see that I wear bifocal glasses, and that I am near-sighted. It is no secret that many senior citizens have a range(s) of vision that is out of focus, and even with glasses often cannot focus on things within the out-of-focus range. **It is not necessary to arrange for a doctor to explain to PSI concepts that are within the domain of common knowledge.** PSI has an obligation to use common sense.

## Summary

Without an equal opportunity to attain the same level of performance as other test takers, I am denied an equal opportunity to compete in all respects as I otherwise could. Strangely, although PSI has made no effort to discern whether taking the test on paper instead of on the computer would provide me with an equal opportunity to attain the same level of performance as others whose eyes focus better within the range of vision at issue, it has stated that a remedy is available but it is contingent on acquiring medical documentation.

**PSI's written policy precludes PSI from engaging in a reasonable interactive process, using common sense, and complying with the ADA.** ("Procedures for providing," ) ("Practical advice for," )

## Resources

### (Texas Department of Licensing and Regulation)

Texas Department of Licensing and Regulation. (n.d.). *Texas department of licensing and regulation auctioneer candidate information bulletin*. 10 pages. (See the "Special Arrangement Form," at the end of the bulletin) Retrieved from [https://candidate.psiexams.com/bulletin/display\\_bulletin.jsp?ro=yes&actionname=83&bulletinid=170&bulletinurl=.pdf](https://candidate.psiexams.com/bulletin/display_bulletin.jsp?ro=yes&actionname=83&bulletinid=170&bulletinurl=.pdf)

### (EEOC, 2002)

EEOC. (2002, October 22). *Enforcement guidance: reasonable accommodation and undue hardship under the americans with disabilities act*. 45 pages. ((I am especially referring to sections "Requesting reasonable accommodation," "Burdens of proof," and "Instructions for investigators.") Retrieved from <http://www.eeoc.gov/policy/docs/accommodation.html>

### (Ada disability definition )

*Ada disability definition.* (n.d.). State of West Virginia. Retrieved from [http://www.ada.wv.gov/state\\_employees/Pages/TileI--EmploymentDefinition.aspx](http://www.ada.wv.gov/state_employees/Pages/TileI--EmploymentDefinition.aspx)

**("Procedures for providing," )**

EEOC, (n.d.). *Procedures for providing reasonable accommodation for individuals with disabilities.* 19 pages. (See especially the "C. The Interactive Process.") Retrieved from website: [http://www.eeoc.gov/eeoc/internal/reasonable\\_accommodation.cfm](http://www.eeoc.gov/eeoc/internal/reasonable_accommodation.cfm)

**("Practical advice for," )**

(n.d.). *Practical advice for drafting and implementing reasonable accommodation procedures under executive order 13164.* 49 pages. Retrieved from EEOC website: [www.eeoc.gov/policy/docs/implementing\\_accommodation.pdf](http://www.eeoc.gov/policy/docs/implementing_accommodation.pdf)